IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6340 of 2003

1. Shri Devram Govind Gadge
Age 48, Occupation-Agriculture
2. Shri Vitthal Govind Gadge
Age 42, Occupat**ion-Agriculture**

(both residents of Nimgaon Sava,
Taluka, Junnar, **District-Pune)** .... Petitioners.

Versus

State of Maharashtra
(through the Collector and Special
Land Acquisition Officer NO.23,
Pune) ..... Respondents.

Mr.P.B.Shah, Advocate for the petitioners.

Mr. C.R.Sonawane, AGP for respondents.

CORAM: R.M.S.KHANDEPARKAR &
V.M.KANADE,JJ.
DATE : SEPTEMBER 21, 2005.

-ORAL JUDGEMENT (AS PER V.M.KANADE,J)

1. The petitioners by this Petition are challenging the acquisition proceeding s initiated by the Special Land Acquisition Officer in respect of land admeasuring 1 hectare and 62 Ares from Gat No.1344 in partition from village Nimgaon Sava, Taluka-Junnar, District-Pune

2. Brief facts relevant for the purpose of this

Petition are as under;

The petitioner’s case is that their land admeasuring 1 hectare 75 Ares was acquired in the year 1982 from Gat No.710 and at the relevant time this land stood in the name of the joint family of the petitioners and that there was partition between the petitioners on 16.8.1986 and pursuant to the said partition , application was made to the revenue authority namely the Tehsildar, Junnar for giving permission for partition of the land. It is the case of the petitioners that Tehsildar, Junnar passed an order dated 6.8.1986 and divided the land amongst the petitioners by metes and bounds and permission under Section 85 of the Maharashtra Land Revenue Code was granted and thus, sanction for partition was given by the Tehsildar under the settlement provision.

3. Thereafter notice under Section 4(1) of the Land Acquisition Act was issued for acquiring petitioner’s land to the extent of 1 hectare and 62 Ares from Gat No. 1344 (P) which was in possession of the petitioners. The petitioners filed their objections and pointed out that the land to the tune of 1 hectare and 75 Ares had already been acquired and thereafter partition was effected in

the year 1986. Therefore, the land of the petitioners after partition was not liable to be acquired for the

second time and in any case after partition land in possession of the petitioners being less than 4 acres. Acquisition notice and the declaration of the Government was liable to be quashed. This objection was not accepted by the Government and finally award was passed on 11.8.93. Application was filed by the petitioners before Deputy Commissioner, Pune Division,Pune on 23.7.2001. Appeal was partly allowed against which Revision was preferred before Revenue and Forest Department,Mantralaya who did not grant any interim orders and thereafter present petitioner has filed this petition under Articles 226 and 227 of the Constitution of India. Learned Advocate for the petitioner submitted that the land having being acquired once in 1982 for Meena Canal by the Special Land Acquisition Officer, Pune, there can be no second acquisition for the said purpose. The second grievance was that in any case the land was not liable to be acquired since there was partition of the joint family and sanction for partition was granted by Tehsildar by order dated 16/8/1986 and pursuant to the sanction , land was divided by metes and bounds and the petitioners got their shares of land

admeasuring 1 hectare and 62 Ares, out of Gat No.1344. It is contended that in view of partition, total holding of the petitioner was less than 4 acres and therefore,

acquisition proceedings was liable to be quashed. Learned advocate relied upon the Judgement of the Division Bench of this Court in case of Veerchand Anna Valwade versus State of Maharashtra, reported in AIR 2002 Bombay 197 in support of his submission. Learned Additional Government Pleader has submitted that petition is liable to be dismissed on the ground that the award was passed on 26.2.1993 and the present petition has been filed in 2003. He relied on the Judgement of Supreme Court in the case of **Municipal Council,Ahmednagar and another versus Shah Hyder Beig and others reported in AIR 2000 Supreme Court 671.** He also submitted that the ratio of the judgement in the case of Veerchand Anna Supra was not applicable to the facts of this case, as petitioners had not specified in the petition, that earlier acquisition was for the same purpose.

4. We have given our anxious consideration to the submission made on behalf of the advocate for the petitioner and respondent. It is admitted that in the present case, notification under section 11 of the Re

settlement Act was issued in the year 1979 after issuance of notification under section 11. There is an embargo on the partition and transfer of land in view of section 12 of the said Act. Section 12 reads thus;

> (1) Notwithstanding anything contained in any law for the time being in force, no agricultural land in the villages or areas specified in the notification under section 11 shall, after publication of that notification in the Official Gazette and until the Collector makes a declaration to the effect that no further land in the benefited zone of any particular village or area therefrom is required for the purposes of this Act, be-
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> (a) transferred, whether by way of sale (including sale in execution of a decree of a civil court or of an award or order of any other competent authority) or by way of gift, exchange, lease or otherwise;
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> (b) sub divided (including sub division by a decree or order of any court or any other competent authority); or
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> (c) partitioned (including partition by a decree or order of any court or any other competent authority); or
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> (c) converted to non-agricultural purpose, except with the permission in writing of the State Government.
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> (2) The State Government may refuse to give such permission, if in its opinion, the transfer, sub-division, partition or conversion of land is likely to defeat the object of this Act, or may give such general or special permission, subject to such conditions, if any, as it may deem fit to impose to carry out the

object of this Act, including a condition that the grant of such permission shall be without prejudice to the area of land liable to be compulsorily acquired under section 14 on the basis of any holding as it existed immediately before the grant of such permission.

(3) Any transfer, sub-division,

partition or conversion of land made in contravention of sub-section (1) or of any condition imposed under sub-section (2), shall be void and inoperative.

(4) The State Government may, by general or special order, delegate its powers under sub section (1) and (2) to all or any of the Commissioners or the Collectors subject to such conditions and limitations, if any, as may be specified in the order.

(5)Any sub-division or partition of any land, in the villages or areas specified in the notification under section 11 and to which restrictions specified in this section apply, made on or before the date of such notification shall not be taken into consideration for the purposes of sub-section (4) of section 14, unless such sub-division or partition is made,-

(a) by meats and bounds and entries in respect thereof are recorded in the relevant village records after due certification; or

(b) by a decree to that effect and entries in respect thereof are recorded in the relevant village records after due certification or the proceeding is pending before the Revenue Authorities for recording the entries in respect of the same in the relevant village records.

5. In view of legal bar on the partition of lands of the petitioner, after issuance of notification under section 11, any transfer or partition which is effected would clearly be illegal and contrary to provisions under section 12 of the said Act. Therefore, though the land was partitioned in 1986 and sanction was given by

Tehsildar on 16.8.86, that alone cannot make partition legal, as it is contrary to section 12 of the said Act. Further oral or written partition which is not registered and which is given effect to after notification under section 11 of the Act, is received, cannot be taken into consideration. Division bench of this court, in the case of **Shivgonda Balgonda Patil and others versus The Director of Resettlement and others, reported in AIR 1992 Bombay page 72** has observed that, mere entry in regular record, cannot be proof of partition. Submission of learned advocate, therefore, cannot be accepted.

6. So far as judgement in case of Veerchand Anna Valwade versus State of Maharashtra reported in AIR 2002 Bombay 197, on which reliance is placed by the advocate for petitioner, is concerned, the said ratio, will not be applicable to the facts of the present case as petitioners have not stated in their petition, that

earlier land which was acquired was for the same purpose. Division Bench in the said judgment on the facts of the said case have observed that , once the land is acquired for re settlement, the project affected persons, thereafter unless provisions of section 13 to 15 are followed, government is precluded from acquiring lands for the same purpose. The ratio, in any case does not apply to the facts of the present case. In view of this the contention of the learned counsel for the petitioner is not accepted. The Writ Petition is dismissed. The rule is discharged. Interim order is vacated.

(R.M.S.KHANDEPARKAR,J)

(V.M.KANADE,J)